

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

PERFIT VISION, EYEWEAR EXPRESS §  
INC. DBA PERFIT VISION & JOHN LUONG §  
*Plaintiffs,* §

v. §

MOUNT VERNON FIRE INSURANCE §  
COMPANY §  
*Defendant.* §

Civil Action No. 4:15-cv-00408

**NOTICE OF REMOVAL**

Defendant Mount Vernon Fire Insurance Company (“Mount Vernon”) hereby gives notice of removal of the above-entitled action from the 400th Judicial District Court of Fort Bend County, Texas, to the United States District Court for the Southern District of Texas, Houston Division pursuant to 28 U.S.C. § 1446. In support thereof, Mount Vernon respectfully shows as follows:

**I.  
INTRODUCTION**

1. On or about January 28, 2015, Plaintiffs Perfit Vision,<sup>1</sup> Eyewear Express Inc. dba Perfit Vision, and John Luong (“Plaintiffs”) filed civil action Cause No. 15-DCV-220724; *Perfit Vision, Eyewear Express Inc. dba Perfit Vision & John Luong v. Mount Vernon Fire Insurance Company* in the 400<sup>th</sup> Judicial District Court of Fort Bend County, Texas. A copy of the state court’s file is attached as Exhibit A. Plaintiffs allege that they operate an eyewear store named Perfit Vision in Sugar Land, Texas. Plaintiffs further allege that on or about March 8-10, 2014, a burglary occurred at Perfit Vision. Plaintiffs allege that Mount Vernon had issued a commercial

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<sup>1</sup> In their petition, Plaintiffs also allege, “**Perfit Vision** is the common name of the business insured in this lawsuit and this suit is brought under the business’ common name under TRCP 28.” *Pls’ Orig. Pet.* [Ex. A] at 1 (emphasis in original).

insurance policy to Chris Tran and John Luong dba Perfit Vision. Plaintiffs contend that Mount Vernon breached this insurance contract by refusing to pay for their damages and costs associated with the burglary. Removal based on diversity jurisdiction is proper because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.

## **II. REMOVAL IS TIMELY**

2. The Fort Bend District Clerk's file does not contain a citation issued to Mount Vernon or a return of service of citation on Mount Vernon. *See* Ex. A. On or about January 29, 2015, general counsel for Mount Vernon received a copy of Plaintiffs' Original Petition from Plaintiffs' counsel. The petition was filed on January 28, 2015. Mount Vernon is therefore filing this notice of removal within the 30-day time period as required by 28 U.S.C. §1446(b). *See Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

## **III. BASIS FOR REMOVAL – DIVERSITY JURISDICTION**

3. Removal is proper because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §1332(a).

### **A. Diversity**

4. This is a case between citizens of different states, and complete diversity among the parties exists and existed as of the time of filing of this lawsuit and as of the time of filing of this notice of removal. No defendant in this lawsuit is a citizen of the same state as Plaintiffs.

5. In their original petition, Plaintiffs allege that Eyewear Express Inc. dba Perfit Vision is a Texas corporation with its principal place of business in Fort Bend County, Texas. *Pls' Orig. Pet.* [Ex. A] at 1.

6. In their original petition, Plaintiffs allege that John Luong is a resident of Texas residing in Fort Bend County, Texas. *Id.*

7. Mount Vernon is a foreign insurance company, with its principal place of business in Wayne, Pennsylvania.

8. Removal is therefore proper under 28 U.S.C. § 1332(a)(1).

**B. Amount in Controversy**

9. In their petition, Plaintiffs specifically allege, “Monetary relief over \$200,000 but not more than \$1,000,000 is being sought.” *Pls’ Orig. Pet.* [Ex. A] at 2. Plaintiffs have asserted causes of action for breach of contract, violations of the Texas Prompt Payment of Claims Act (TPPCA), and breach of the duty of good faith and fair dealing and seek economic damages, exemplary damages, penalties, interest, and attorney’s fees. *Id.* at 6-8. Accordingly, the amount in controversy exceeds \$75,000, excluding interest and costs. *See* 28 U.S.C. § 1332. Removal is therefore proper. *Id.*

**IV.  
NOTICE**

10. Pursuant to 28 U.S.C. § 1446(d), prompt written notice of the filing of this Notice of Removal is being given to all parties, and a true and correct copy of this Notice of Removal is being filed with the Fort Bend County District Clerk.

**V.  
COMPLIANCE WITH 28 U.S.C. § 1446(a) AND LOCAL RULE LR81**

11. Pursuant to 28 U.S.C. § 1446(a) and Local Rule LR81 for the United States District Court for the Southern District of Texas, the following items are attached to this Notice of Removal: the state court file documents are attached as Exhibit A, and the information required under Local Rule LR81 is attached as Exhibit B.

**VI.  
VENUE**

12. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a) because the state court in which this action has been pending is located in this district.

**VII.  
JURY DEMAND**

13. Plaintiffs did not demand a jury in their original petition and did not file a separate jury demand.

**VIII.  
CONCLUSION AND PRAYER**

14. All of the prerequisites for removal are satisfied, and removal is proper pursuant to 28 U.S.C. §§ 1332(a) and 1446. Defendant Mount Vernon Fire Insurance Company respectfully requests that this Court remove this lawsuit to the United States District Court for the Southern District of Texas, Houston Division and for any other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

BINGHAM, MANN & HOUSE

BY: /s/ Lisa G. Mann

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ATTORNEYS FOR DEFENDANT  
MOUNT VERNON FIRE  
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**CERTIFICATE OF SERVICE**

I hereby certify service of the foregoing instrument on February 12, 2015, as follows:

By Certified Mail, Return Receipt Requested:

Carlos Peniche

LAM, LYN & PHILIP, P.C.

3555 Timmons Lane, Suite 790

Houston, Texas 77027

**Attorneys for Plaintiffs**

/s/ Lisa G. Mann

LISA G. MANN